

Kedar R.

January 27, 2000

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Chemical Land Holdings, Inc.
Two Tower Center Boulevard, Floor 10
East Brunswick, New Jersey 08816
Attn.: Mr. Clifford Firstenberg, Project Manager

Re: Diamond Alkali Superfund Site Operable Unit Two
Passaic River Study Area
Remedial Investigation/Feasibility Study

RECEIVED
JAN 31 2000

Dear Mr. Firstenberg:

This is in response to your January 13, 2000 electronic mail message to me regarding some requests I made informally in the spirit of cooperation and time-saving.

Unvalidated Data

I requested page one containing the results of each sample data package, in unvalidated form. EPA does not agree with the rationale you provided for not submitting this data. Paragraph 74 of the Administrative Order on Consent, Index No. II-CERCLA-0117 (Order) states that EPA and its contractors and agents shall have access to **all** records relating to implementation of the work under this Order, except for records or documents that are protected as attorney-client communications or attorney work product. Notwithstanding the exceptions identified above, no information specified in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. Section 9604, shall be withheld. All such records shall be made available to EPA upon request to Respondent's Facility Coordinator.

Unvalidated data is marked as unvalidated and thus will not be used in any quantitative assessments until it has been validated in accordance with the approved QAPP. As Remedial Project Manager for the site, I have determined that it will be helpful for me to become acquainted with the data as it is reported in unvalidated form.

With regards to CLH's position that such unvalidated data may be wrongfully subject to public inspection if it is released to the Agency at this time is not a valid position for withholding the data. Please note that according to the terms of the Order, specifically paragraph 73, all documents, data or information, including raw sampling and monitoring data, produced by

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Respondent and submitted to EPA in the course of implementing this Order shall be available to the public unless Respondent identifies them as confidential and EPA determines that they meet the confidentiality requirements stated in 40 CFR Part 2, Subpart B and Section 104 of CERCLA, 42 U.S.C. Section 9604. Paragraph 73 also states that no sampling data collected pursuant to this Order shall be considered confidential. Whether the unvalidated data resides in CLH's offices or EPA's offices, such data is subject to the provisions of the Freedom of Information Act.

Please consider this EPA's second request to CLH's Facility Coordinator for the unvalidated data. Again, we are not requesting the entire packages, just the first sheet which provides the results of the sampling. We are not requesting copies of all of the backup documentation, at this time.

Risk Assessment

The revised schedule submitted with the Ecological Sampling Plan included the provision for CLH to submit a Draft Human Health and Ecological Risk Assessment. Based upon my reading of paragraph 39, it was unclear as to whether CLH was actually designated to write the Human Health and Ecological Risk Assessment as paragraph 39 ends with the following statement: "In either case, the HERA report will be prepared by EPA following the collection of this additional field data." However, after further evaluation of the language and its placement within subparagraph d. of paragraph 39, it is now resolved that CLH may indeed prepare and submit the Draft HERA report as outlined in paragraph 39, subparagraph b, item iv.

Split Sampling

CLH was notified that EPA intends to take split samples during the Spring sampling event. However, in your e-mail response, you advanced an argument that there may not be sufficient sample mass to satisfy both the QAPP requirements and the split sampling, and that there will be a significant and unnecessary cost impact with little benefit. Please note that paragraph 72 of the Order requires that CLH allow EPA or its designated representative to take duplicate and/or split samples of any samples collected in connection with work performed in accordance with this Order. It is EPA's duty to oversee work performed by CLH and split sampling is one method of oversight to ensure the validity of the data, thus we will be collecting at least 5% of the total number of samples which should not be an unduly burdensome amount. Please make arrangements to gather enough sample mass to satisfy the requirements of both the QAPP and our split sampling program.

As specified in Attachment 1 of the Order, EPA will provide oversight throughout the RI/FS and CLH will support EPA's initiation and conduct of activities related to implementation of oversight activities.

Please keep me informed as to the scheduled field dates for the Spring sampling event.

Sincerely yours,

Sharon Jaffess, Remedial Project Manager
Emergency & Remedial Response Division

cc: Jonathan Berg, NJDEP
Anne Hayton, NJDEP

bcc: Mary Logan, ERRD
Kedari Reddy, ORC
Mel Hauptman, ERRD
William McCabe, ERRD